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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 MANUEL L. ESQUIBEL,) NO. CV 15-8959-E
12)
13 Plaintiff,)
14)
15 v.) MEMORANDUM OPINION
16)
17 CAROLYN W. COLVIN, Acting)
18 Commissioner of Social Security,)
19)
20 Defendant.)
21 _____)

22 PROCEEDINGS
23

24 Plaintiff filed a complaint on November 17, 2015, seeking review
25 of the Commissioner's denial of benefits. The parties consented to
26 proceed before a United States Magistrate Judge on December 30, 2015.
27 Plaintiff filed a motion for summary judgment on September 7, 2016.
28 Defendant filed a motion for summary judgment on November 7, 2016.
The Court has taken the motions under submission without oral
argument. See L.R. 7-15; "Order," filed November 23, 2015.

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BACKGROUND

Plaintiff asserted disability since April 14, 2010,¹ based primarily on alleged mental impairments (Administrative Record ("A.R.") 37-42, 75, 186-89). An Administrative Law Judge ("ALJ") reviewed the medical record and heard testimony from Plaintiff and a vocational expert (A.R. 11-543). The ALJ found Plaintiff has severe "anxiety and affective disorders" but retains the residual functional capacity to perform his past relevant work, as well as other jobs existing in significant numbers in the national economy (A.R. 13-20). The ALJ deemed Plaintiff's contrary testimony not credible (A.R. 16-17). The Appeals Council considered additional evidence, but denied review (A.R. 1-4). Petitioner contends that the ALJ failed to state sufficient reasons for discounting Plaintiff's credibility.

STANDARD OF REVIEW

Under 42 U.S.C. section 405(g), this Court reviews the Administration's decision to determine if: (1) the Administration's findings are supported by substantial evidence; and (2) the Administration used proper legal standards. See Carmickle v. Commissioner, 533 F.3d 1155, 1159 (9th Cir. 2008); Hoopai v. Astrue, 499 F.3d 1071, 1074 (9th Cir. 2007); see also Brewes v. Commissioner of Social Sec. Admin., 682 F.3d 1157, 1161 (9th Cir. 2012). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v.

¹ The record reflects that Plaintiff began working at a full-time job in early 2014 (A.R. 205).

1 Perales, 402 U.S. 389, 401 (1971) (citation and quotations omitted);
2 see also Widmark v. Barnhart, 454 F.3d 1063, 1066 (9th Cir. 2006).

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4 Where, as here, the Appeals Council considered additional
5 evidence but denied review, the additional evidence becomes part of
6 the record for purposes of the Court's analysis. See Brewes v.
7 Commissioner, 682 F.3d at 1163 ("[W]hen the Appeals Council considers
8 new evidence in deciding whether to review a decision of the ALJ, that
9 evidence becomes part of the administrative record, which the district
10 court must consider when reviewing the Commissioner's final decision
11 for substantial evidence."; expressly adopting Ramirez v. Shalala, 8
12 F.3d 1449, 1452 (9th Cir. 1993)); Taylor v. Commissioner, 659 F.3d
13 1228, 1231 (2011) (courts may consider evidence presented for the
14 first time to the Appeals Council "to determine whether, in light of
15 the record as a whole, the ALJ's decision was supported by substantial
16 evidence and was free of legal error"); Penny v. Sullivan, 2 F.3d 953,
17 957 n.7 (9th Cir. 1993) ("the Appeals Council considered this
18 information and it became part of the record we are required to review
19 as a whole"); see generally 20 C.F.R. §§ 404.970(b), 416.1470(b).

20 21 DISCUSSION

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23 After consideration of the record as a whole, Defendant's motion
24 is granted and Plaintiff's motion is denied. The Administration's
25 findings are supported by substantial evidence and are free from

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1 material² legal error. Plaintiff's contrary arguments are unavailing.

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3 An ALJ's assessment of a claimant's credibility is entitled to
4 "great weight." Anderson v. Sullivan, 914 F.2d 1121, 1124 (9th Cir.
5 1990); Nyman v. Heckler, 779 F.2d 528, 531 (9th Cir. 1985). Where, as
6 here, the ALJ finds that the claimant's medically determinable
7 impairments reasonably could be expected to cause some degree of the
8 alleged symptoms of which the claimant subjectively complains, any
9 discounting of the claimant's complaints must be supported by
10 specific, cogent findings. See Berry v. Astrue, 622 F.3d 1228, 1234
11 (9th Cir. 2010); Lester v. Chater, 81 F.3d 821, 834 (9th Cir. 1995);
12 but see Smolen v. Chater, 80 F.3d 1273, 1282-84 (9th Cir. 1996)
13 (indicating that ALJ must offer "specific, clear and convincing"
14 reasons to reject a claimant's testimony where there is no evidence of
15 malingering).³ An ALJ's credibility findings "must be sufficiently
16 specific to allow a reviewing court to conclude the ALJ rejected the
17 claimant's testimony on permissible grounds and did not arbitrarily
18 discredit the claimant's testimony." See Moisa v. Barnhart, 367 F.3d

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20 ² The harmless error rule applies to the review of
21 administrative decisions regarding disability. See Garcia v.
22 Commissioner, 768 F.3d 925, 932-33 (9th Cir. 2014); McLeod v.
Astrue, 640 F.3d 881, 886-88 (9th Cir. 2011).

23 ³ In the absence of an ALJ's reliance on evidence of
24 "malingering," most recent Ninth Circuit cases have applied the
25 "clear and convincing" standard. See, e.g., Burrell v. Colvin,
26 775 F.3d 1133, 1136-37 (9th Cir. 2014); Chaudhry v. Astrue, 688
27 F.3d 661, 670, 672 n.10 (9th Cir. 2012); Molina v. Astrue, 674
28 F.3d 1104, 1112 (9th Cir. 2012); see also Ballard v. Apfel, 2000
WL 1899797, at *2 n.1 (C.D. Cal. Dec. 19, 2000) (collecting
earlier cases). In the present case, the ALJ's findings are
sufficient under either standard, so the distinction between the
two standards (if any) is academic.

1 882, 885 (9th Cir. 2004) (internal citations and quotations omitted);
2 see also Social Security Ruling 96-7p. As discussed below, the ALJ
3 stated sufficient reasons for deeming Plaintiff's subjective
4 complaints less than fully credible.

5
6 The ALJ noted that Plaintiff resumed working at a full-time job
7 in January of 2014, and that Plaintiff did so without claiming medical
8 improvement as the reason for having resumed work (A.R. 11, 16-17).
9 Plaintiff's employment record reflects full-time work with some
10 overtime and double time, beginning in January of 2014 (A.R. 205).
11 Later in 2014, Plaintiff reported to his psychiatrist that Plaintiff
12 was "managing OK on new job" and was "reasonably satisfied" (A.R. 532-
13 33). When a claimant performs substantial gainful activity, the
14 claimant is not disabled. See, e.g. Keyes v. Sullivan, 894 F.2d 1053
15 (9th Cir. 1990); Honey v. Colvin, 2015 WL 5096410, at *2 (C.D. Cal.
16 Aug. 28, 2015); 20 C.F.R. §§ 404.1520(b), 416.920(b). Plaintiff's
17 demonstrated ability to work properly impugns Plaintiff's testimony
18 that his mental symptoms have been of disabling severity. See, e.g.,
19 Bray v. Commissioner, 554 F.3d 1219, 1227 (9th Cir. 2009); cf.
20 Blankenship v. Bowen, 874 F.2d 1116, 1121-22 (6th Cir. 1989)
21 (recognizing that most mental impairments are progressive in nature),
22 cited with approval in Morgan v. Sullivan, 945 F.2d 1079, 1082-83 (9th
23 Cir. 1991).

24
25 The ALJ also stated that Plaintiff had been seeking full-time
26 employment since 2011 (A.R. 17). The record contains numerous
27 references to Plaintiff's searches for employment over an extended
28 period of time (A.R. 390-91, 395, 398-401, 478). A disability

1 claimant's search for employment during the period of claimed
2 disability can undermine the claimant's credibility. See Copeland v.
3 Bowen, 861 F.2d 536, 542 (9th Cir. 1988); Bray v. Commissioner of
4 Social Security Admin., 554 F.3d 1219, 1227 (9th Cir. 2009) (fact that
5 a claimant has sought out employment weighs against a finding of
6 disability); see also Ghanim v. Colvin, 763 F.3d 1154, 1165 (9th Cir.
7 2014) ("continued receipt" of unemployment benefits can cast doubt on
8 a claim of disability); but see Webb v. Barnhart, 433 F.3d 683, 688
9 (9th Cir. 2005) ("That Webb sought employment suggests no more than
10 that he was doing his utmost, in spite of his health, to support
11 himself").

12
13 The ALJ also identified inconsistencies in Plaintiff's own
14 statements (A.R. 17). For example, at the hearing Plaintiff denied
15 having attended college during the period of claimed disability, even
16 though Plaintiff told his psychiatrist in 2012 that Plaintiff then was
17 attending college (A.R. 47, 392-93). Similarly, Plaintiff testified
18 he had not used drugs since he was a youth in his 20's, and yet
19 Plaintiff reported to his psychiatrist in 2010 that he then was using
20 methamphetamine (when Plaintiff was 48 years old) (A.R. 45, 47, 408,
21 410). The ALJ properly could rely on these inconsistencies to
22 discount Plaintiff's credibility. See Burch v. Barnhart, 400 F.3d
23 676, 680 (9th Cir. 2005) ("In determining credibility, an ALJ may
24 engage in ordinary techniques of credibility evaluation, such as
25 considering . . . inconsistencies in claimant's testimony.").

26
27 The ALJ also observed that some of Plaintiff's daily activities
28 appeared inconsistent with Plaintiff's claimed limitations (A.R. 17).

1 The record supports this observation. Whereas Plaintiff claimed a
2 disabling inability to get along with others, Plaintiff took public
3 transportation, attended church, went to movies and shopped in stores,
4 all during the period of claimed disability (A.R. 44, 231-32, 259,
5 290, 321-22). Inconsistencies between claimed incapacity and admitted
6 activities properly can impugn a claimant's credibility. See, e.g.,
7 Molina v. Astrue, 674 F.3d at 1112 ("the ALJ may consider
8 inconsistencies in the claimant's testimony or between the testimony
9 and the claimant's conduct"); Thomas v. Barnhart, 278 F.3d 947, 958-59
10 (9th Cir. 2002) (inconsistency between claimant's testimony and
11 claimant's actions supported rejection of claimant's credibility);
12 Verduzco v. Apfel, 188 F.3d 1087, 1090 (9th Cir. 1999) (inconsistency
13 between claimant's testimony and claimant's actions cited as a clear
14 and convincing reason for rejecting claimant's testimony).

15
16 Finally, the ALJ expressly stated that Plaintiff's "allegations
17 of severe symptoms are not supported by the clinical evidence" (A.R.
18 17). Although a claimant's credibility "cannot be rejected on the
19 sole ground that it is not fully corroborated by objective medical
20 evidence, the medical evidence is still a relevant factor. . . ."
21 Rollins v. Massanari, 261 F.3d 853, 857 (9th Cir. 2001). Here, the
22 ALJ properly could infer from the medical evidence that Plaintiff's
23 mental problems were not as profound as Plaintiff asserts.

24
25 To the extent one or more of the ALJ's stated reasons for
26 discounting Plaintiff's credibility may have been invalid, the Court
27 nevertheless would uphold the ALJ's credibility determination under
28 the circumstances presented. See Carmickle v. Commissioner, 533 F.3d

1 1155, 1162-63 (9th Cir. 2008) (despite the invalidity of one or more
2 of an ALJ's stated reasons, a court properly may uphold the ALJ's
3 credibility determination where sufficient valid reasons have been
4 sated). In the present case, the ALJ stated sufficient valid reasons
5 to allow this Court to conclude that the ALJ discounted Plaintiff's
6 credibility on permissible grounds. See Moisa v. Barnhart, 367 F.3d
7 at 885. The Court therefore defers to the ALJ's credibility
8 determination. See Lasich v. Astrue, 252 Fed. App'x 823, 825 (9th
9 Cir. 2007) (court will defer to Administration's credibility
10 determination when the proper process is used and proper reasons for
11 the decision are provided); accord Flaten v. Secretary of Health &
12 Human Services, 44 F.3d 1453, 1464 (9th Cir. 1995).⁴

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25 ⁴ The Court does not determine herein whether Plaintiff's
26 subjective complaints are credible. Some evidence suggests that
27 those complaints may be credible. However, it is for the
28 Administration, and not this Court, to evaluate the credibility
of witnesses. See Magallanes v. Bowen, 881 F.2d 747, 750, 755-56
(9th Cir. 1989).

1 **CONCLUSION**

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3 For all of the foregoing reasons,⁵ Plaintiff's motion for summary
4 judgment is denied and Defendant's motion for summary judgment is
5 granted.

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7 LET JUDGMENT BE ENTERED ACCORDINGLY.

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9 DATED: November 10, 2016.

10
11 /s/
12 CHARLES F. EICK
13 UNITED STATES MAGISTRATE JUDGE
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25 ⁵ The Court has considered and rejected each of
26 Plaintiff's arguments. Neither Plaintiff's arguments nor the
27 circumstances of this case show any "substantial likelihood of
28 prejudice" resulting from any error allegedly committed by the
Administration. See generally McLeod v. Astrue, 640 F.3d at 887-
88 (discussing the standards applicable to evaluating prejudice).